

**NOVEMBER 2003 AGENDA**

<b>SUBJECT</b>	<b>X</b>	<b>ACTION</b>
		<b>INFORMATION</b>
		<b>PUBLIC HEARING</b>
Funding for Countywide Charter Schools (Assembly Bill 1994): Approve Commencement of the Rulemaking Process for Amendments to Title 5.		

**Recommendation:**

California Department of Education staff recommend that the State Board of Education: (1) approve the proposed regulations pertaining to funding for countywide charter schools established by provisions of Assembly Bill (AB) 1994, the Initial Statement of Reasons, and the Notice of Proposed Rulemaking, with technical modifications as may be identified and incorporated by staff, subject to the approval of the Executive Director of the State Board; (2) direct staff to proceed with the 45-day public comment period in accordance with the Administrative Procedure Act; and (3) direct staff to conduct a public hearing on the proposed regulations pursuant to California Code of Regulations, Title 5, Section 18460.

**Summary of Previous State Board of Education Discussion and Action:**

The SBE adopted permanent regulations implementing to the financial reporting requirements established by AB 1994. Those regulations are currently with the Office of Administrative Law (OAL) awaiting final approval.

The SBE received an information memorandum in August 2003 with an earlier draft of this regulation included with other AB 1994 programmatic regulations, and received this final version in an October 2003 information memorandum.

**Summary of Key Issue(s):**

Assembly Bill 1994 (Chapter 1058, Statutes of 2002) contained a number of significant programmatic provisions affecting charter schools, and the bill requires the State Board to adopt regulations to implement certain aspects of the statutory changes. The Advisory Commission on Charter Schools (ACCS) discussed various versions of AB 1994 programmatic implementation regulations on several occasions, both in concept and with regard to certain specific elements. During August 2003, State Board members received an information memorandum with a version of the permanent regulations that the ACCS had tentatively endorsed in July. However, at its September 2003 meeting, the ACCS considered the regulations further, and proposed several significant changes. The attached text, which was also provided as part of an information memorandum in October 2003, reflects the ACCS-recommended changes.

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**Summary of Key Issue(s):**

This proposed regulation has been separated from the other AB 1994 regulations in an effort to get them adopted by the First Principal Apportionment in February 2004. There is concern that some of the provisions of the other programmatic regulations may generate controversy and take longer to get through the adoption process. The funding mechanism proposed in this regulation is modeled after the existing funding method for other county-approved charter schools; therefore, it is anticipated that the adoption process for this regulation could be more straightforward. The other AB 1994 programmatic regulations are also before the SBE this month to commence the rulemaking process.

The proposed regulation is currently undergoing fiscal review by CDE staff. There may be technical or nonsubstantive changes recommended as a result of this review, which would need to be incorporated into the regulations prior to the initial rulemaking package being submitted to OAL.

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**Fiscal Analysis (as appropriate)**

The statutory changes enacted by AB 1994 will result in increased costs associated with the increased workload to the CDE and SBE to review, approve, and oversee a greater number of charter schools. There are no anticipated additional costs associated with this proposed regulation, although CDE staff has not completed the financial impact statement. That statement will be provided in a last minute memorandum.

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**Attachment(s)**

Attachment 1: [Notice of Proposed Rulemaking \(Pages 1-5\)](#)

Attachment 2: [Initial Statement of Reasons \(Pages 1-2\)](#)

Attachment 3: [Proposed Regulations \(Pages 1-2\)](#)

STATE OF CALIFORNIA  
Governor

GRAY DAVIS,

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**CALIFORNIA STATE BOARD OF EDUCATION**

1430 N Street; P.O. Box 944272  
Sacramento, CA 94244-2720



**TITLE 5. EDUCATION**

**CALIFORNIA STATE BOARD OF EDUCATION**

**NOTICE OF PROPOSED RULEMAKING**

**State Board Review of Multi-site Charters of Statewide Interest**

*[Notice published \_\_\_\_\_, 2003]*

The State Board of Education (State Board) proposes to adopt the regulations described below after considering all comments, objections, or recommendations regarding the proposed action.

**PUBLIC HEARING**

The State Board will hold a public hearing beginning at \_\_\_\_\_ on \_\_\_\_\_, \_\_\_\_\_, at 1430 N Street, Room 1101, Sacramento. The room is wheelchair accessible. At the hearing, any person may present statements or arguments orally or in writing relevant to the proposed action described in the Informative Digest. The State Board requests that any person desiring to present statements or arguments orally notify the Regulations Adoption Coordinator of such intent. No oral statements will be accepted subsequent to this public hearing.

**WRITTEN COMMENT PERIOD**

Any interested person, or his or her authorized representative, may submit written comments relevant to the proposed regulatory action to the Regulations Adoption Coordinator. All written comments must be received by the Regulations Adoption Coordinator no later than the close of the public hearing scheduled to start at \_\_\_\_\_ on \_\_\_\_\_, \_\_\_\_\_. Requests to present oral statements at the public hearing or written comments for the State Board's consideration should be directed to:

Debra Strain, Regulations Adoption Coordinator  
California Department of Education  
LEGAL DIVISION  
1430 N Street, Room 5319  
Sacramento, California 94244-2720

Telephone : (916) 319-0641  
FAX: (916) 319-0155  
E-mail: [dstrain@cde.ca.gov](mailto:dstrain@cde.ca.gov)

### **AUTHORITY AND REFERENCE**

Authority for these regulations is found in *Education Code* Section 33031. *Education Code* Section 33031 is the State Board's general authority to adopt rules and regulations for the government of the day and evening schools of the state that are not inconsistent with the requirement of statute.

Additional authority is provided in *Education Code* Section 47605.6(b)(5)(I), which requires the State Board to adopt regulations to determine the manner in which financial audits for countywide charter schools shall be conducted.

References are made to *Education Code* sections 47632 and 47651. These statutes govern the funding of charter schools.

### **INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW**

The proposed regulation is necessary to fund and to determine the manner in which financial audits shall be conducted for countywide charter schools, which were established by Assembly Bill (AB) 1994 (Chapter 1058, Statutes of 2002).

Specifically, this adds Section 11967.8 to Title 5 of the California Code of Regulations to provide technical clarity regarding the funding calculation and process for providing operational funding to countywide charter schools. This section addresses a similar issue as that addressed in Section 11967.7 above but for countywide, rather than statewide charters. However, in this case, the regulations apply an exiting statutory definition of “sponsoring local education agency” that is currently applied to other county-authorized charter schools.

### **DISCLOSURES REGARDING THE PROPOSED ACTION**

Mandate on local agencies and school districts: None

Cost or savings to any state agency: None

Costs to any local agency or school district which must be reimbursed in accordance with Government Code Section 17561: None

Other non-discretionary cost or savings imposed on local educational agencies: None

Cost or savings in federal funding to the state: None

Significant, statewide adverse economic impact directly affecting business including the ability of California businesses to compete with businesses in other states: None.

Cost impacts on a representative private person or businesses: The State Board is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action.

Adoption of this regulation will not:

- (1) create or eliminate jobs within California;
- (2) create new businesses or eliminate existing businesses within California; or
- (3) affect the expansion of businesses currently doing business within California.

Significant effect on housing costs: None.

Affect on small businesses: The proposed amendments to the regulations do not have an affect on small businesses because they provide a process for a new type of charter school to obtain funding and therefore, have no effect on existing charter schools or small businesses. The proposed regulations do not impose additional workload on small businesses or contractors funded by the Department.

### **CONSIDERATION OF ALTERNATIVES**

In accordance with Government Code Section 11346.5(a)(13), the State Board must determine that no reasonable alternative it considered or that has otherwise been identified and brought to the attention of the State Board, would be more effective in carrying out the purpose for which the action is proposed or would be as effective and less burdensome to affected private persons than the proposed action.

The State Board invites interested persons to present statements or arguments with respect to alternatives to the proposed regulations at the scheduled hearing or during the written comment period.

### **CONTACT PERSONS**

Inquiries concerning the substance of the proposed regulations should be directed to:

Eileen Cubanski, Administrator  
California Department of Education

Charter School Division  
1430 N Street, Room 5401  
Sacramento, CA 95814  
E-mail: [ecubansk@cde.ca.gov](mailto:ecubansk@cde.ca.gov)  
Telephone: (916) 322-6029  
FAX: (916) 322-1465

Requests for a copy of the proposed text of the regulation, the Initial Statement of Reasons, the modified text of the regulation, if any, or other technical information upon which the rulemaking is based or questions on the proposed administrative action may be directed to the Regulations Adoption Coordinator.

#### **AVAILABILITY OF INITIAL STATEMENT OF REASONS AND TEXT OF PROPOSED REGULATIONS**

The Regulations Adoption Coordinator will have the entire rulemaking file available for inspection and copying throughout the rulemaking process at her office at the above address. As of the date this notice is published in the Notice Register, the rulemaking file consists of this notice, the proposed text of the regulation, and the Initial Statement of Reasons. A copy may be obtained by contacting the Regulations Adoption Coordinator at the above address.

#### **AVAILABILITY OF CHANGED OR MODIFIED TEXT**

Following the public hearing and considering all timely and relevant comments received, the State Board may adopt the proposed regulations substantially as described in this notice. If the State Board makes modifications which are sufficiently related to the originally proposed text, the modified text (with changes clearly indicated) will be available to the public for at least 15 days before the State Board adopts the regulation as revised. Requests for copies of any modified regulations should be sent to the attention of the Regulations Adoption Coordinator at the address indicated above. The State Board will accept written comments on the modified regulations for 15 days after the date on which they are made available.

#### **AVAILABILITY OF THE FINAL STATEMENT OF REASONS**

Upon its completion, a copy of the Final Statement of Reasons may be obtained by contacting the Regulations Adoption Coordinator at the above address.

#### **AVAILABILITY OF DOCUMENTS ON THE INTERNET**

Copies of the Notice of Proposed Action, the Initial Statement of Reasons, the text of the regulations in underline and strikeout, and the Final Statement of Reasons, can be accessed

through the California Department of Education's Web site at  
<<http://www.cde.ca.gov/regulations>>.

## INITIAL STATEMENT OF REASONS

### Section 11967.8. Funding for Countywide Charter Schools

#### SPECIFIC PURPOSE OF THE REGULATIONS

The proposed regulations will clarify existing law with regard to the funding process to be used for countywide charter schools, and will determine the manner in which financial audits for countywide charter schools shall be conducted.

#### NECESSITY/RATIONALE

Assembly Bill (AB) 1994 (Chapter 1058, Statutes of 2002) amended the Charter School Act of 1992, and added *Education Code* Section 47605.6 that creates new responsibilities for county boards of education to review and approve charter schools of countywide interest that propose to operate on multiple sites within the county.

#### **SECTION 11967.8**

This section provides technical clarity regarding the funding calculation and process for providing operational funding to countywide charter schools and determines the manner in which financial audits for countywide charter schools shall be conducted.

**Subsection (a).** Countywide charter schools approved pursuant to *Education Code* Section 47605.6 do not have a clear statutory definition of a “sponsoring local educational agency (LEA),” nor is there a process by which to calculate the local tax share of the charter block grant. However, *Education Code* Section 47632(i)(4) does provide a clear definition of the sponsoring LEA for other types of county-authorized charters. Therefore, this subsection applies that definition of sponsoring LEA to countywide charters. In this case, the sponsoring LEA is the district of residence of the pupil. Because county offices already apply this definition for certain other county-authorized charter schools, absent any clear legislative direction, it is reasonable to apply this definition to charter schools approved by a county board of education pursuant *Education Code* Section 47605.6.

**Subsection (b).** This subsection establishes the role of the county office is establishing accounts for countywide charter schools and for countywide charter schools to access PERS and STRS. This subsection is consistent with current law and practice for other county-authorized charter schools.

**Subsection (c).** This subsection meets the requirement of *Education Code* Section 47605.6(b)(5)(I) that the State Board adopt regulations regarding audits of countywide charters. The subsection applies the same standard that is applicable to other charter schools in the state,



with an added provision of consideration of audits for each individual site of the multi-site countywide charter.

**Subsection (d).** This subsection would make this section operative for the entire 2002-03 fiscal year. This is necessary to ensure that there is an ability to fund countywide charter schools for all of the 2003-04 fiscal year even though the regulations will take effect in the middle of that year.

#### **TECHNICAL, THEORETICAL, AND/OR EMPIRICAL STUDIES, REPORTS, OR DOCUMENTS.**

The State Board did not rely upon any other technical, theoretical, or empirical studies, reports, or documents in proposing the adoption of these regulations.

#### **REASONABLE ALTERNATIVES TO THE REGULATIONS AND THE AGENCY'S REASONS FOR REJECTING THOSE ALTERNATIVES.**

The State Board was not presented with other viable alternatives to the adoption of these regulations.

#### **REASONABLE ALTERNATIVES TO THE PROPOSED REGULATORY ACTION THAT WOULD LESSEN ANY ADVERSE IMPACT ON SMALL BUSINESS.**

The State Board has not identified any alternatives that would lessen any adverse impact on small business.

#### **EVIDENCE SUPPORTING FINDING OF NO SIGNIFICANT ADVERSE ECONOMIC IMPACT ON ANY BUSINESS.**

The proposed regulations would not have a significant adverse economic impact on any business because they provide a process for a new type of charter school to obtain funding and therefore, have no effect on existing charter schools or small businesses.

**Title 5. EDUCATION**

**Division 1. State Department of Education**

**Chapter 11. Special Programs**

**Subchapter 19. Charter Schools**

*Add Section 11967.8 to read:*

**Section 11967.8 Funding for Countywide Charter Schools.**

(a) For the purpose of funding charter schools approved pursuant to Education Code Section 47605.6, the following shall apply.

(1) The charter school shall be funded pursuant to Chapter 6 of Part 26.8 of the Education Code (commencing with Section 47630) and shall receive its funding directly.

(2) The “sponsoring local education agencies” as defined in Education Code Section 47632 means the pupils’ school districts of residence.

(b) (1) The warrant for a charter school approved pursuant to Education Code Section 47605.6 shall be drawn in favor of the superintendent of schools of the county office of education that approved the charter. The county superintendent of schools is authorized to establish appropriate funds or accounts in the county treasury for each charter school.

(2) For charter schools approved pursuant to Education Code Section 47605.6, the county office of education may make arrangements for participation in State Teachers’ Retirement System and/or Public Employees Retirement System as requested by the charter school. The county office may charge the charter school for the actual cost of services in accordance with Education Code Section 47611.3.

(c) For the purposes of Education Code Section 47605.6(b)(5)(I), a charter school approved by a county office of education pursuant to Education Code Section 47605.6 shall conduct its annual independent audit in keeping with Education Code Section 47605(b)(5)(I) and related regulatory provisions. The charter school shall indicate in its petition the manner in which the school’s individual sites will be appropriately included in the audit process.

(d) This section shall apply for the entire 2003-04 fiscal year and each fiscal year thereafter.

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Note: Authority cited: Sections 33031 and 47605(b)(5)(I), Education Code. Reference Sections  
74632 and 47651, Education Code.  
10/8/03